



POLICE DEPARTMENT

August 20, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Emanuele Leggio  
Tax Registry No. 936937  
Narcotics Borough Bronx  
Disciplinary Case No. 2014-11410  
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The above-named member of the Department appeared before me on June 16, 2015, charged with the following:

1. Said Police Officer Emanuele Leggio, on or about November 9, 2012, at approximately 0100 hours, while assigned to the 41<sup>st</sup> Precinct and on duty, in the vicinity of 1035 Longwood Avenue, Bronx County, used excessive force against Person A, in that he repeatedly struck Person A about the head and body.

P.G. 203-11 – USE OF FORCE

2. Said Police Officer Emanuele Leggio, on or about November 9, 2012, at approximately 0100 hours, while assigned to the 41<sup>st</sup> Precinct and on duty, in the vicinity of 1035 Longwood Avenue, Bronx County, used excessive force against Person A, in that he banged Person A's head against a wall.

P.G. 203-11 – USE OF FORCE

The Civilian Complaint Review Board (CCRB) was represented by Vanessa McEvoy, Esq. Respondent was represented by Michael Lacondi, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of each Specification.

SUMMARY OF EVIDENCE PRESENTED

At about 12:30 a.m. on November 9, 2012, Person A was brought to the 41<sup>st</sup> Precinct in the Bronx by Police Officer Homer Henriquez. Officer Henriquez had stopped Person A for possessing an open container of alcohol in public, and a check of Person A's name revealed he had an open warrant. Because of the warrant, Officer Henriquez took Person A into custody.

At the time Person A was brought to the precinct, Respondent, Detective Emanuele Leggio, was already at the location on unrelated police business. Respondent was operating the prison transport van for the Tactical Narcotics Team of Bronx Narcotics that evening. Part of Respondent's responsibilities was to process prisoners arrested by the team at the 41<sup>st</sup> Precinct before they were brought to Central Booking. Respondent was not part of the arrest or processing of Person A who was placed in a cell at the precinct, at which time he became involved in an altercation with Respondent. The parties provide conflicting descriptions as to the precise nature of that altercation.

Person A did not appear to testify; at the time of the hearing, he was incarcerated on a pending homicide charge. Instead, CCRB offered into evidence a recording of his interview with CCRB from February 27, 2013 (CCRB Ex. 1), along with a transcript of the interview (CCRB Ex. 2). The Court also accepted into evidence a list of Person A's 34 prior convictions (CCRB Ex. 3), one of which was a Robbery felony in 2006, and the



remainder of which were roughly split between misdemeanors and violations.

Additionally, CCRB offered into evidence the relevant portion of Person A's medical records from Lincoln Medical and Mental Health Center (CCRB Ex. 5), and the FDNY Ambulance Report (CCRB Ex. 4).

According to Person A's CCRB interview, Person A denied having an open container of alcohol, admitting he had been drinking vodka earlier, but claiming he had just purchased a cup of ice at the time he was stopped on the street. At the precinct, as he was being led into the cell by Officer Henriquez, he commented on how crowded the cell was, since there were about six or seven prisoners already inside. Officer Henriquez told Person A to go into the cell, and Person A wondered out loud whether he was going to have to sit on someone's lap, which drew laughter from the other prisoners. Person A stated that Respondent, who was in the area fingerprinting another prisoner, then ordered him to "shut the fuck up and get in the fucking cell." When Person A asked why Respondent was getting involved since Person A was talking to his arresting officer, Respondent pushed Person A inside the cell. Person A then made a comment about how Respondent was "a feisty one," and that Respondent was just mad because "his girlfriend is out there fucking" while he had to work.

Person A stated that at that point, Respondent ordered him out of the cell; he stepped out of the cell, and Respondent punched Person A in the face with a closed fist. Person A insisted he didn't punch Respondent at any time, though he did acknowledge that his initial impulse was to hit back, and he did "throw his hands up" before catching himself and lowering his hands; Person A claimed to have learned his lesson from a prior fight with other officers that didn't go well for him. He also admitted that he "flared" his



body at Respondent, pulling his hand back as if he were going to hit him. Person A stated that he instead allowed Respondent to handcuff him, which was done without incident, and Respondent then led Person A back to a rear cell.

According to Person A, on the way back to the rear cell Respondent started banging Person A's head against the wall; Person A fell to the ground, and Respondent repeatedly punched him in the face. Respondent then picked him up and threw him inside the cell. Person A again claimed that he never swung back at Respondent, instead saying to him "I'm going to sue you." Person A initially stated that Officer Henriquez was there to witness the entire sequence of events, but later backtracked and claimed he wasn't sure if Officer Henriquez was present at the rear cell since Person A was "too busy getting pounded on."

A few hours later, when it was time to bring him to Central Booking, Person A complained of injuries he had received to his face and head, and asked to receive medical treatment. He stated that he informed a captain that one of his officers had beaten him; Person A explained that he was "pissed off." telling the captain that the officer who was hitting him should have "taken off the handcuffs and beaten (him) like a man."

Person A was brought to Lincoln Medical Center. Person A complains in the medical records that he was "punched in the face." The records reveal he was treated for multiple facial fractures, including the area surrounding his right eye. There is a mention in the initial "Assessment" section of hematoma to the posterior scalp, but no further indication of that injury. Although the ambulance report characterizes injuries around Person A's face as "defensive wounds," there is no indication in that report or the medical records of more traditional protective wounds, such as bruising or scratches to



Person A's arms. The records do note that Person A was complaining of right wrist pain. An arrest photo (CCRB Ex. 7) provides a visual illustration of the injuries to Person A's face, as they appeared a couple of days later when he was processed for Obstructing Governmental Administration and other charges in connection with this incident.

Respondent called two witnesses to the stand and testified on his own behalf. Officer Henriquez, testified that he stopped Person A because he was holding a cup that contained alcohol; Person A admitted to him that the cup contained alcohol (Tr. 32-33). When the officer ran a name-check it revealed an open warrant, so he took Person A into custody and transported him to the 41 st Precinct, where Officer Henriquez was assigned at the time. Person A was compliant on the way to the precinct, but became irate when Officer Henriquez placed him in the cell, complaining that he "shouldn't be here" (Tr. 36). Officer Henriquez estimated there were five-to-ten prisoners in the cell.

After he placed Person A inside the cell, Officer Henriquez went to go work on his paperwork. Officer Henriquez testified that shortly after, he heard a commotion by the cell; he did not see how the commotion started, and did not see any punches thrown. The officer immediately went to the cell area and observed Respondent *inside the cell* trying to handcuff Person A, who was on his knees "violently" swinging his arms in resistance to Respondent's efforts. Officer Henriquez helped handcuff Person A, who continued to stiffen his body to prevent the officers from getting him under control (Tr. 28-30, 33, 37-38).

Officer Henriquez, testified that he then assisted Respondent in escorting Person A to a rear cell. He did not observe any injuries on Person A at that time.

Respondent and Officer Henriquez placed Person A inside the cell without incident, and they both walked away (Tr. 31, 33, 50).

Officer Henriquez then left the precinct on an unrelated transport assignment, and returned about 3:30 am, at which time he learned that he would be processing the arrest of Person A for his assault on Respondent. At this time, the officer noticed the swelling to Person A's right eye. Officer Henriquez spoke with Respondent to learn additional details of the altercation; Respondent indicated that Person A had made some derogatory remarks about Respondent's wife, though Officer Henriquez could not recall the exact comments that were made (Tr. 42).

Lieutenant Matthew Bomparola testified that he was working as the desk sergeant at the 41<sup>st</sup> Precinct on the day of the incident. He observed that Person A was irate when brought into the precinct, yelling and cursing at Officer Henriquez and himself about the arrest (Tr. 54). Bomparola then became aware of a scuffle in the main cell area, and observed Officer Henriquez run over to help restrain Person A, who was then brought to a back cell. The Sergeant did not see any punches being thrown (Tr. 55, 74-75), and did not learn until several hours later the details of the altercation between Respondent and Person A (Tr. 66).

Over the next few hours, Bomparola checked on [REDACTED] several times, who appeared to be sleeping with his head positioned away from the gate; Bomparola did not notice any injuries to the prisoner. There also was a cell attendant there responsible for keeping an eye on the prisoners. At no time did Bomparola hear or become aware of any type of commotion in the rear cell area (Tr. 74).



Lieutenant Bomparola testified that it was only when they were preparing to transport Person A to Central Booking that he first observed Person A's swollen right eye. At that time, he spoke with Respondent to find out what had occurred: Respondent explained that after he was placed in the cell, Person A started making comments and cursing at Respondent, and then lunged at Respondent, who shoved Person A away. Person A came at Respondent a second time, at which point Respondent hit him one time, both in self-defense and to prevent the prisoner from escaping from the open cell (Tr. 58, 71).

Respondent, who joined the force in January 2005, testified that he went into the cell preparing to process one of his five prisoners, when the altercation with Person A occurred. Respondent had just finished fingerprinting one of his prisoners, brought him back to the cell, and was going to get another prisoner who was sleeping on a bench inside the cell. Respondent walked into the cell alone in order to retrieve the prisoner who was sleeping (Tr. 83-84).

Respondent testified that he heard Person A "talking a lot of bull" from inside the cell, but he couldn't remember the exact words of what Person A was saying. Respondent stated that he could not specifically recall whether Person A made a comment to him about his girlfriend being out there having sex while he had to work, though he did acknowledge that Person A was making comments about people's family members. Respondent explained that he was focused only on dealing with the five prisoners for whom he was responsible, and essentially ignored Person A since he had nothing to do with Person A's arrest (Tr. 84, 95).



Respondent testified that when he went to retrieve his prisoner from inside the cell, Person A, unprovoked, lunged at him with his hands up and fists clenched in a boxing position; Respondent pushed him away onto a bench. Person A then jumped back up, came at Respondent again, and swung at Respondent, who successfully ducked the blow. Respondent swung back at Person A, punching him in the face (Tr. 84-86, 96-97). Person A kept on swinging and the two exchanged several punches, hitting each other, before Respondent was able to wrestle Person A to the ground. Respondent estimated that his entire struggle with Person A lasted about 30 seconds (Tr. 88). Respondent injured his right hand during the altercation (Tr. 102).

According to Respondent, his initial concern was not to let the prisoner get within his "personal safety zone" while he was alone inside the open cell. Respondent explained that he was concerned that either Person A or any of the other prisoners in the cell could have "got a hold of him", and felt that Person A's actions were a clear threat to his safety (Tr. 85-86). Respondent only punched Person A to prevent Person A from hurting him (Tr. 106). As the altercation was happening, Respondent was yelling at Person A to "stop resisting, get to the ground"; he explained that the reason he was yelling was because he was alone and was hoping that someone would come into the cell to assist him (Tr. 87). Respondent insisted that he used the "minimum amount of force necessary" in order to subdue Person A (Tr. 97).

Officer Henriquez then came to Respondent's assistance and helped handcuff the prisoner (Tr. 87). Person A continued to resist the entire time, flailing his arms and legs and "thrashing his body about" (Tr. 88). Person A also tensed up his body to prevent the officers from gaining control of him, and tried to hit the officers with his elbows (Tr. 89).



After Person A was handcuffed, Respondent and Officer Henriquez led him back to a rear cell. Respondent testified that there was no striking or hitting of the prisoner as this was happening. Respondent also denied ever hitting Person A's head against a wall (Tr. 92, 99). Respondent claimed that he did not observe any injuries on Person A (Tr. 104-105), and is unsure how the prisoner's right eye was injured (Tr. 92-93), though he did acknowledge that it was possible he hit Person A in the eye and caused the injury (Tr. 105).

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### FINDINGS AND ANALYSIS

Pursuant to NYPD Patrol Guide section 203-11, in situations where force is justified, officers are responsible for using the "minimum force" necessary under the circumstances. When taking an individual into custody, officers must use only that amount of force that is necessary to overcome resistance from the individual. The Patrol Guide emphatically states that "excessive force will not be tolerated."

Here, CCRB has the burden of proving by a preponderance of the credible evidence that Respondent wrongfully used excessive force against Person A. Without in-court testimony from Person A, CCRB relies primarily on hearsay evidence introduced through Person A's CCRB interview, and the medical records of his injuries. Person A's version of what happened in the cell was not corroborated by any witnesses. The credible evidence presented here failed to sustain CCRB's burden.

Hearsay evidence is admissible in an administrative tribunal, although it certainly is preferable to have first-hand, in-court testimony from an actual witness, where opposing counsel is afforded an opportunity to confront the witness, and the witness'



demeanor on the stand can be considered. A case may, however, be proven with hearsay evidence, provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235, 565 NYS2d 114 (1<sup>st</sup> Dept. 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 NY2d 174, 299 NYS2d 194 (1969).

There are several factors here that impact negatively on the reliability of Person A's statement to CCRB. First, Person A admitted to Officer Henriquez that he had alcohol in his cup when he was stopped, but then tried to minimize his culpability to CCRB by claiming that there was only ice in the cup. Although this inconsistency does not relate directly to the incident involving Respondent, it does provide insight into Person A's willingness to manipulate the truth in his statement to CCRB.

Moreover, the account proffered by Person A was contradicted by the three witnesses who actually testified, each of whom came across as reliable and convincing on the stand. An important area where Person A's story was contradicted concerns the precise location where the altercation with Respondent occurred. The details of each party's version of what happened is interwoven with where each of them claimed the encounter took place. According to Person A, the confrontation with Respondent began outside the cell: Respondent first pushed Person A into the cell, and then ordered him to step out. Person A claimed that he complied, and once outside the cell Respondent then punched him in the face, presumably in reaction to the verbal taunts from Person A.

Respondent, though, testified that the confrontation took place inside the cell, which is consistent with his description of how he pushed Person A away and onto a bench inside the cell, after which the prisoner jumped back up and lunged at Respondent



again. Significantly, Officer Henriquez provided corroboration of Respondent's testimony in two regards: first, Officer Henriquez testified that he placed Person A inside the cell and then walked off to do his paperwork, which contradicts Person A's claim that the incident began at the precise moment he was being placed inside the cell. Further, Officer Henriquez testified that when he rushed over a short time later in response to hearing a commotion, the Detective and the prisoner were, indeed, inside the cell.

As such, the Court is not persuaded by Person A's story that Respondent first pushed Person A into the cell, then ordered him out of the cell and punched him. Rather, the Court credits the account of Respondent and Officer Henriquez that the altercation occurred inside the open cell, where there were other prisoners, leaving Respondent in a precarious position with legitimate safety concerns. Moreover, even if the Court questions Respondent's testimony that he was completely oblivious to the taunts from Person A, the Court still finds Respondent's account of how Person A initially lunged at him, leading to the exchange of punches that followed, to be logical and convincing.

Since the evidence does establish that Respondent punched Person A several times, the Court must assess whether this punching constituted excessive force under Specification 1. In making this assessment, the conduct of Person A during this incident is relevant. Whereas Respondent testified that Person A physically initiated the encounter and repeatedly swung at him, Person A, insisted that he never punched Respondent, or even swung at him, during the entire incident. Person A claimed that he recognized it was a no-win situation for him, so he fully cooperated with Respondent and didn't fight back in any way.



Yet several items of evidence call into question whether the behavior of Person A, who has 34 prior convictions, including a felony, and currently is incarcerated on a homicide charge, really was as innocent as he tried to portray. Although calm at the location of his arrest, multiple witnesses noted that Person A appeared loud and irate at the time he was lodged at the precinct. Person A admitted to CCRB and in the medical records that he had been drinking vodka that evening. Person A, himself, acknowledged that he did "throw up his hands" and did flare his body as if to hit Respondent, before claiming to think the better of such a course of action. The tenor of his later statement at the precinct, that the officer should have uncuffed him and fought him "like a man," further belies his attempt to portray himself as someone who showed total restraint. The Court also notes that the medical records indicate that Person A complained of right wrist pain; though the precise source of that pain was not documented, it certainly is consistent with Respondent's testimony that he was punched.

The Court is mindful that Person A did suffer serious injuries, primarily to the area around his right eye; the medical records confirm that Person A sustained fractures to his face. The Court also is aware that Respondent clearly did punch Person A several times in a way that likely caused these injuries, notwithstanding Respondent's testimony, and despite the claims by Respondent and Officer Henriquez that they did not initially observe any visible injuries to Person A's face.

However, the issue here is whether CCRB has sustained its burden of proving that Respondent's actions ran afoul of the Patrol Guide's proscription on the use of excessive force. Under the totality of circumstances, the evidence presented to this tribunal at the hearing does not support a finding that Respondent used more than the minimal force



necessary to bring the situation under control. Respondent entered the cell to retrieve one of the prisoners he needed to process, who was sleeping on a bench inside the cell. Respondent was alone inside this open cell with Person A and several other prisoners when Person A confronted him. Even after Respondent pushed him away, Person A came at Respondent again, fists clenched, and swung at Respondent. Respondent was in a vulnerable position and had a legitimate concern for his safety. In response to this precarious situation, Respondent punched back at Person A, and the two exchanged several punches only until Respondent, aided by Officer Henriquez, was able to subdue the resistant prisoner and diffuse the dangerous situation. Person A was then escorted to a rear cell without further incident. As such, the Court finds that CCRB did not meet its burden of proving that Respondent's punching of Person A amounted to excessive force as charged in Specification 1.

With respect to Specification 2, there is disagreement regarding what occurred as Person A was escorted to the rear cell. Whereas Person A claimed he was repeatedly beaten by Respondent on the way to the cell, including having his head banged off the wall, Respondent denied there was any hitting or violence at all. Again, Person A's hearsay statement was not corroborated; though there is a brief mention in the medical records of a posterior scalp injury, there is no indication of how that injury was caused. Significantly, Person A specifically stated in the medical records that he had been punched in the face, but there is no mention of his having his head banged against a wall.

In contrast to Person A's uncorroborated story, Officer Henriquez confirmed Respondent's account that the prisoner was placed in the cell without incident, and that he and Respondent then walked away. Lieutenant Bomparola also testified that at no

time did he recall hearing any type of scuffle from the rear cell area. Without any corroboration for Person A's description of events, and in light of the credible witness testimony contradicting his claims, the Court finds that CCRB did not meet its burden of proving that Respondent banged Person A's head against the wall on the way back to the cell, as alleged in Specification 2.

Accordingly, since CCRB has failed to meet its burden of proving that Respondent used excessive force against Person A, I find Respondent Not Guilty of Specifications 1 and 2.

Respectfully submitted,



Jeff S. Adler  
Assistant Deputy Commissioner – Trials

**APPROVED**

OCT 13 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER